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June 20, 2017

**VIA FIRST CLASS MAIL**

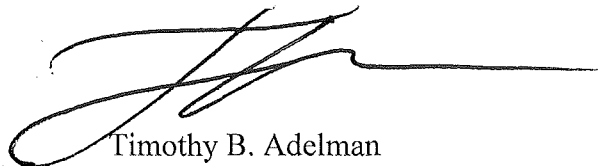
Mr. Paul Parker  
Director, Center for Health Care Facilities  
Maryland Health Care Commission  
4160 Patterson Avenue  
Baltimore, Maryland 21215

RE: Montgomery Hospice, Inc. CON Application: Docket No. 16-16-2384

Dear Mr. Parker:

Enclosed please find Montgomery Hospice, Inc.'s written response to comments addressing the Montgomery Hospice, Inc. application and completeness responses for a Certificate of Need, styled as Docket No. 16-162384 before the Maryland Health Care Commission, Center for Health Care Facilities.

Sincerely,



Timothy B. Adelman

cc: Mr. Kevin McDonald, Chief, Certificate of Need (via email)  
Ms. Suellen Wideman, Esq., Assistant Attorney General (via email)  
Ms. Ruby Potter, Health Facilities Coordination Officer (via email)  
Ms. Pamela Creekmur, Prince George's County Health Officer (via email)

**BEFORE THE MARYLAND HEALTH CARE COMMISSION**

**IN THE MATTER OF**

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**MONTGOMERY HOSPICE, INC.**

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**Docket No. 16-16-2384**

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**RESPONSE TO COMMENTS ADDRESSING THE MONTGOMERY HOSPICE, INC.  
APPLICATION FOR A CERTIFICATE OF NEED**

Montgomery Hospice, Inc. ("Montgomery Hospice"), as an applicant for a Certificate of Need for general hospice services ("CON"), hereby responds to the comments addressing the Montgomery Hospice application and completeness response submitted to the Maryland Health Care Commission ("Commission"). As an initial matter, Montgomery Hospice submits that the Commission should not accept the comments submitted by Amedisys Maryland, LLC ("Amedisys") and Bayada Home Health Care, Inc. ("Bayada") as they do not comply with the requirements set forth in COMAR 10.24.01.08F.(c). Specifically, both comments fail to "state with particularity the State Health Plan standards or the review criteria" Montgomery Hospice's application failed to meet and "the reasons why [Montgomery Hospice] does not meet those standards or criteria." Rather, the comments assert that Montgomery Hospice's budget demonstrate that Montgomery Hospice can be successful in Prince George's County even if more than one additional Certificate of Need for general hospice services is issued.

In the event that the Commission finds that the comment submitted by either Amedisys or Bayada satisfies the standard provided at COMAR 10.24.01.08F.(c), Montgomery Hospice hereby submits the following response.

**1. The Maryland CON Program strives to ensure only high-quality, cost-effective health care providers are authorized to serve Maryland residents.**

The Commission has made it clear that the goal of the Maryland CON Program is to create a process whereby new health care service providers are thoroughly vetted and only authorized to do business in Maryland jurisdictions on an "as needed" basis. *available at:* [http://mhcc.maryland.gov/mhcc/pages/hcfs/hcfs\\_con/hcfs\\_con\\_overview.aspx](http://mhcc.maryland.gov/mhcc/pages/hcfs/hcfs_con/hcfs_con_overview.aspx). As is the case in the current proceedings before the Commission, once the Commission projects a finite need in a certain Maryland jurisdiction, it is the burden of each CON applicant to prove to the Commission that the applicant satisfies the State Health Plan standards and review criteria.

Amedisys has distorted this fundamental concept of quality oversight by asserting that a policy goal of the Commission is to ensure competition among health care providers. Its argument seems to be that the more CON applicants the Commission authorizes to provide general hospice services in Prince George's County, the more each applicant will devote to their respective outreach and education efforts. In turn, according to this argument, patient utilization will only increase because these providers within the hypercompetitive marketplace will do everything they can to increase their respective market share. In two very important respects, this argument is flawed.

First, the Maryland General Assembly did not create the Maryland CON Program framework in order to foster competition amongst health care providers. Instead, at its core the Maryland CON Program was created "to promote the development of a health care system that provides, for all citizens, financial and geographic access to quality health care at a reasonable cost."<sup>1</sup> Indeed, CON laws are inherently designed to limit provider versus provider competition.<sup>2</sup>

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<sup>1</sup> Md. Code, Health-Gen. Art. § 19-102(a); *Adventist Healthcare Midatlantic, Inc. v. Suburban Hosp., Inc.*, 711 A.2d 158, 159 (Md. Ct. App. 1998).

The Commission relies on the State Health Plan standards and review criteria to determine which health care providers should be granted the authority to satisfy a particular Maryland jurisdiction's target need for health care services; the Commission has no stake in regulating a particular jurisdiction's level of competition.

Second, the Amedisys argument confuses the primary goal of the Commission—increasing patient utilization in Prince George's County with the help of new high quality hospice service providers. The Commission is seeking applicants for a CON in Prince George's County to address the unmet target need for hospice services. Currently, eight hospice providers exist in Prince George's County. The question is not whether one or four CONs are necessary to meet the goal of the Commission but whether each applicant, if granted a CON based on the State Health Plan standards and the review criteria, would meet the goals of the Commission.

Furthermore, increasing the number of CONs simply to increase competition will likely result in some providers failing to remain financially viable. Unfortunately, when a health care provider struggles financially, it will likely impact its ability to meet the costs associated with providing high quality patient care. Therefore, Montgomery Hospice believes the Commission should only issue CONs to those providers that can meet the goals of the Commission regardless of whether one CON is issued or four.

Amedisys argues that to increase utilization there must be a "significant level of public outreach and education." Amedisys further theorizes that competition will foster public outreach as the numerous hospice providers will be fighting for market share. In satisfying the goal of the Commission to increase patient utilization, Montgomery Hospice is not relying upon an

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<sup>2</sup> CON-Certificate of Need State Laws, National Conference of State Legislatures, August 25, 2016, *available at*: <http://www.ncsl.org/research/health/con-certificate-of-need-state-laws.aspx> ("The basic assumption underlying CON regulation is that excess capacity stemming from overbuilding of health care facilities results in health care price inflation.").

economic theory of market competition but rather it is focusing on increasing utilization through specific public outreach and education.

Whether alongside the existing eight (8) hospice service providers or with additional new hospice service providers,<sup>3</sup> Montgomery Hospice has a robust plan for outreach and education efforts.<sup>4</sup> The outreach efforts Montgomery Hospice plans for Prince George's County mirror the successes Montgomery Hospice has had in Montgomery County in reaching out to the community and will include:

- a) Conduct focus groups in different faith communities throughout the county;
- b) Form an advisory committee of professionals who can act as a sounding board and help promote Montgomery Hospice educational efforts;
- c) Continue our present collaboration with professionals in the faith community, the Prince George's County hospitals, doctors and extended care facilities and others who work with the aging community in the County; and
- d) Assign a clinical liaison to every hospital operating in Prince George's County to assist hospital clinical staff in presenting end-of-life care to eligible patients and facilitate admission if the patient or their loved ones chooses hospice care.

Montgomery Hospice is passionate about the services it provides. In submitting its CON application, Montgomery Hospice expended significant resources looking at the projected need in Prince George's County, scrutinizing its own resources necessary to provide the same high quality care it provides to the residents of Montgomery County and completing a very realistic financial projection of all costs associated with becoming a general hospice services provider in Prince George's County. This level of effort is a hallmark of Montgomery Hospice and a reason why it received the 2017 Leadership Montgomery Nonprofit Impact Award. The Nonprofit

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<sup>3</sup> See the Montgomery Hospice Completeness Response at p. 12 ("The board of directors of Montgomery Hospice has fully committed to extending service to the neighboring county if approved, **regardless of the Commission's decision regarding the number of providers to approve.**") (emphasis added).

<sup>4</sup> See the Montgomery Hospice Application at pp. 15-16 and 20-21; see the Montgomery Hospice Completeness Response at pp. 7-10.

Impact Award recognizes Montgomery Hospice as an organization with a strong commitment to leadership and who has made a difference in Montgomery County.<sup>5</sup> By awarding Montgomery Hospice, Leadership Montgomery recognized that "for 35 years Montgomery Hospice has provided compassionate, professional medical care and volunteer support to Montgomery County residents."

**2. Montgomery Hospice's need projections were misinterpreted by Amedisys and Bayada.**

Amedisys comments that Montgomery Hospice's projection is "in excess of the Commission's need projections of 662 patients." Bayada comments that Montgomery Hospice's projection "exceeds the 662 case need projection contained in the Commission's most recent hospice need projections." These comments misconstrue the methodology of the Maryland Hospice Need Formula as specified in COMAR 10.24.13.06. As the Commission knows, the "Maryland Hospice Need Projections for Target Year 2019" published in the Maryland Register are based on hospice deaths, not patients served. Because not all patients admitted in a single year will die in that year, and because a minority of hospice patients will be discharged alive (either because their prognosis changes, or because they transfer out of the area), there will always be more patients served than there are patient deaths in any year. Montgomery Hospice's volume projections were specifically structured to meet the complete hospice need without the requirement to take any volume from the existing 8 providers in Prince George's County.

**3. Montgomery Hospice has provided a realistic budget based on the project need identified by the Commission.**

As previously stated, Montgomery Hospice expended significant effort in analyzing the financial commitment necessary to provide hospice services in Prince George's County. Comparing Montgomery Hospice's budget to Amedisys, P-B Health or Bayada's proposed

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<sup>5</sup> Available at: <https://www.leadershipmontgomerymd.org/nonprofit-impact-award>, last visited June 6, 2017.

budgets is comparing apples to oranges. Montgomery Hospice prepared a budget on the project need. Its budget is a product of patient census. The less patients Montgomery Hospice will actually serve, both its revenue and its expenses will inevitably decrease. The Montgomery Hospice strategy in submitting its CON application was not to dabble with providing hospice services in Prince George's County but to commit strongly to the community in the same way it has committed to the Montgomery County community.

Montgomery Hospice is surprised that the Amedisys comment criticizes Montgomery Hospice for being a high cost hospice program. Montgomery Hospice does not view itself as a "high cost" hospice program but rather a high quality hospice program. Stated another way, Montgomery Hospice does not determine what services it will provide based on its profit margin but rather, as a charitable organization, it provides the best quality services that its patients need and deserve. The average per day reimbursement for hospice services is \$160 per patient day. Amedisys proudly asserts that it provides low cost services at \$108 per patient day (generating \$52 in profit per patient day). Whether the hospice services cost the provider \$108 or \$173 per patient day does not impact the payment from third party payors as the reimbursement rate is fixed by a specific rate independent from a specific provider's own cost. Therefore, when one hospice service provider decreases the average cost of care per patient day, it is not benefiting the community in any way; it is merely padding its profit margin and begging the question whether the patient population is receiving the complete extent of all necessary care. Moreover, if the patient does not have a third-party payor, Montgomery Hospice is committed to providing charity care. As identified in its application, Montgomery Hospice has budgeted between \$450,000 and \$694,000 in charity care depending on patient census.

**4. No matter the Commission's decision on other applications, Montgomery Hospice remains committed to providing services to Prince George's County residents.**

Montgomery Hospice has already indicated that it remains passionate about obtaining a CON to provide hospice services in Prince George's County even if the Commission is inclined to grant more than one new CON. On the other hand, Amedisys suggests that if Montgomery Hospice were awarded a CON, that Amedisys would not have sufficient volume to be financially viable. Amedisys comments letter states "The minimal number of patients that MH would leave for another program to serve is less than the number of patients that Amedisys (or any other applicant in this review) has project to service in order to be financially viable." Amedisys' comment raises the concern about allowing multiple CONs into Prince George's County for the purpose of developing more competition. If a few of the new providers are successful to the detriment of the others, then as Amedisys has stated, it will not be financially viable.

On a related note, Amedisys' comment regarding Montgomery Hospice's budget is internally inconsistent. It suggests that Montgomery Hospice's budget is not viable but concludes that "MH's own financial data shows that it can be financially viable in both of its jurisdictions at a lower, reasonable level of patient volume." So, while the Amedisys comment is largely devoted to criticizing Montgomery Hospice's budgeting to the projected need based on the misconstruction of the Maryland Hospice Need Formula methodology within the State Health Plan, it acknowledges that whether it is the only new entrant or competing with three other new entrants, Montgomery Hospice's project will be financially viable.

**5. The significant investment within Montgomery Hospice's budget is based on experience in Montgomery County and strong utilization improvement goals.**

Montgomery Hospice's proposed operating budget and its alternative operating budget—labeled as "unreasonable" by its co-applicants—build in a necessary expectation of relatively low

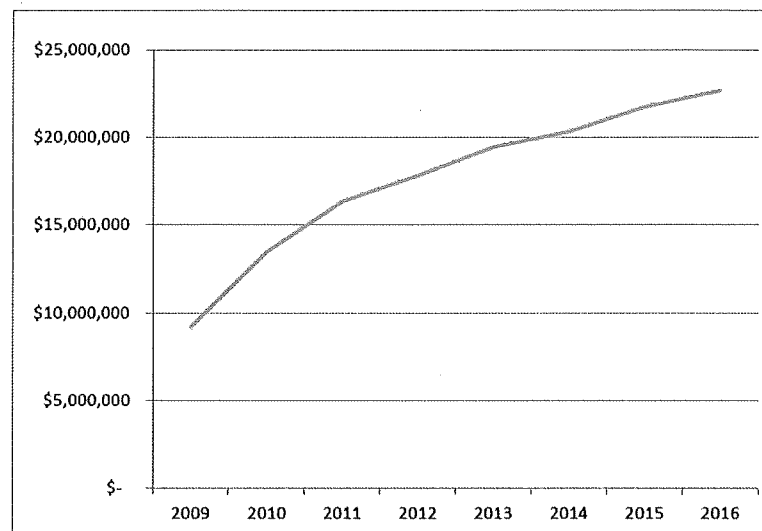


caseloads for the clinical staff because the Prince George's County patient population is anticipated to exhibit shorter lengths of stay due to the strong possibility of late referrals.<sup>6</sup> At the same time, Montgomery Hospice is prepared to make a large investment in outreach and public education. Montgomery Hospice understands that investment in outreach and public education programs are financially critical for a hospice services provider because over the previous decade these efforts allowed its Net Assets to grow each year:

### **GROWTH OF MONTGOMERY HOSPICE NET ASSETS—2009 to present**

MH Net Assets History

	Amount	Y/Y changes
2009	\$ 9,183,399	
2010	\$ 13,482,120	47%
2011	\$ 16,356,729	21%
2012	\$ 17,825,318	9%
2013	\$ 19,435,771	9%
2014	\$ 20,319,415	5%
2015	\$ 21,719,744	7%
2016	\$ 22,645,890	4%



In order to increase hospice services to Prince George's County as a currently under-served and under-utilizing jurisdiction, a greater initial investment will be necessary than would be required to serve populations widely amenable to utilizing hospice services at the end of life. Conversely, if such heavy investment is not made in the coming years, payors will experience higher healthcare costs generally because hospice utilization will continue to be low. As the Commission is likely aware, there is ample literature showing aggregate savings in health care

<sup>6</sup> According to Medicare Hospice Claims data for 2015 as reported by HospiceAnalytics, Inc., average lengths of stay for hospice patients in 2015 were: (a) 48 days for Prince George's County; (b) 54 days for the State of Maryland at large; and (c) 64 days across the United States. Available at: [www.HospiceAnalytics.com](http://www.HospiceAnalytics.com) (accessible via subscription and on file with undersigned counsel).

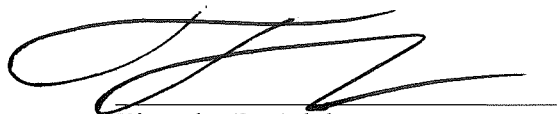
costs when hospice services are appropriately utilized in lieu of emergency department and in-patient hospital care.<sup>7</sup>

### CONCLUSION

Montgomery Hospice is excited for the opportunity to serve Prince George's County residents through the provision of high-quality hospice services. In whichever capacity the Commission may grant Montgomery Hospice's CON application, Montgomery Hospice will dedicate its resources and efforts necessary to increase the Prince George's County hospice utilization rates to target levels. While Montgomery Hospice understands that creation of a more competitive provider market is not the concern of the Maryland CON Program, Montgomery Hospice is prepared to pursue its charitable mission and serve County residents under any market dynamic.

This preparation is evidenced by Montgomery Hospice's: (a) relationships with Prince George's County community leaders; (b) thorough understanding of the methodology of the Maryland Hospice Need Formula as specified in COMAR 10.24.13.06; (c) and the particular budgetary requirements vital to enabling a provider to increase utilization rates for hospice services.

Respectfully Submitted,



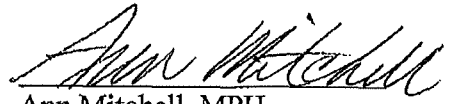
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Annapolis, Maryland 21401  
Counsel for Montgomery Hospice, Inc.

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<sup>7</sup> See, e.g., "Hospice Enrollment Saves Money For Medicare And Improves Care Quality Across A Number Of Different Lengths-Of-Stay," Health Affairs, Vol. 32, March 2013, available at: <http://content.healthaffairs.org/content/32/3/552.full>.

I hereby declare and affirm under the penalties of perjury that the facts stated in Montgomery Hospice's Response to Comments Addressing the Montgomery Hospice, Inc. Application for a Certificate of Need for hospice services in Prince George's County are true and correct to the best of my knowledge, information and belief.

6/12/17  
Date

  
Ann Mitchell, MPH  
President and CEO  
Montgomery Hospice

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 20<sup>th</sup> day of June, 2017 a copy of the RESPONSE TO COMMENTS ADDRESSING THE MONTGOMERY HOSPICE, INC. APPLICATION FOR A CERTIFICATE OF NEED was sent via First Class Mail and Electronic Mail to the following:

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A handwritten signature in black ink, consisting of a large, stylized 'T' followed by a horizontal line extending to the right.

Timothy B. Adelman